

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In Re: FIRED UP, INC. Debtor	§ § § § §	Case No. 14-10447-tmd (Chapter 11)
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**MOTION TO COMPROMISE BETWEEN DEBTOR, UNSECURED CREDITORS'
COMMITTEE, FRG CAPITAL, LLC AND FORD FAMILY**

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

Debtor will request that a hearing be conducted on this matter on October 23, 2014 at 1:30 pm in courtroom no. 1, 903 San Jacinto, Austin, TX 78701. You will receive a further notice if the Motion to Expedite is granted.

COMES NOW, Fired Up, Inc., the Debtor-in-Possession in the above captioned and numbered proceeding and files his Motion to Compromise and Settle with Unsecured Creditors' Committee, FRG Capital, LLC and Ford Family and would respectfully show the Court as follows:

1. Debtor seeks to approve an agreement with the Official Committee of Unsecured Creditors ("Committee"), FRG Capital, LLC ("FRG") and the Ford Family (as defined below) to compromise and settle claims asserted by the Committee against FRG and the Ford Family and to set forth the terms of a proposed consensual plan.

JURISDICTION

2 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), (C), (F) and (H).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The basis for the relief requested herein is primarily ground in 11 U.S.C. §105(a) and Fed. R. Bankr. P. 9019.

BACKGROUND

5. On March 27, 2014 (“Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (“Court”), thereby commencing this chapter 11 case (“Case”). Debtor continues in possession of its property and is operating and managing its business as Debtor-in-Possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

6. The United States Trustee appointed the Committee on April 7, 2014.

7. On May 20, 2014, Committee Counsel made demand upon the Debtor to pursue certain alleged claims against FRG Capital and certain members of the Ford family.

8. On July 11, 2014, the Debtor and its counsel, counsel for the Ford Family, counsel for FRG, counsel for the Unsecured Creditors’ Committee, financial advisors for both the Debtor and the Committee and five members of the Committee met to discuss a global resolution of the case, including the claims against insiders. At the meeting, the Debtor presented its analysis to the Committee with regard to the claims against FRG Capital and the Ford Family. Over a period of weeks, the parties continued to discuss resolution of the case. The parties ultimately reached an agreement which is reflected in this motion.

9. The terms of the agreement are as follows:

a. The Debtor's claims or potential claims against FRG Capital, the Ford Family and their related entities will be released in return for the agreement of FRG Capital to reduce its claim from \$13,560,385.76 to not more than \$12,000,000.00. The liens held by FRG Capital as reduced will be declared to be valid and continuing. The parties released will include the members of the Ford Family, entities which they control and the Debtor's officers, directors and key employees. The Ford Family is defined as collectively Creed Ford III, Lynn Ford, Harper Ford Rehme, Creed Ford IV, any spouses, children or siblings of said individuals which any of the foregoing individually or together own a controlling interest (including, but not limited to FRG Capital, LLC), and any affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case, solely in their capacity as such).

b. The Debtor and the Committee shall file and support a Joint Plan containing the following terms:

i. The Plan shall include a General Unsecured Creditors' Trust ("GUC Trust") which shall be funded with \$4.48 million contributed by the Debtor and/or its insiders. Additionally, if the Debtor rejects any leases subsequent to August 1, 2014, the Debtor shall pay an additional 25% of any allowed rejection claims resulting from such additional rejected leases. Further, any preference claims other than claims against insiders or parties presently doing business with the Debtor shall be contributed to the GUC Trust.

ii. The Trustee for the GUC Trust shall be selected by the Committee subject to court approval.

iii. The GUC Trust shall be responsible for payment of all unsecured creditor claims, save and except for claims arising from personal injury claims or employment discrimination claims. Additionally, the GUC Trust shall be responsible for payment of all fees and expenses incurred by the Committee's professionals. The GUC Trust shall also be responsible for all costs incurred by it with regard to claims objections and pursuit of any litigation initiated by the GUC Trust.

iv. The Debtor shall be responsible for payment of all professionals retained by it.

GROUND FOR RELIEF

10. Motions to compromise and settle are authorized by Fed.R.Bankr.P. 9019(a).

11. The Bankruptcy Court has wide discretion to determine whether a proposed compromise should be approved. In a ruling on the propriety of the compromise, the Court should determine whether the settlement is in the best interest of the bankruptcy estate. *In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984). Bankruptcy settlements "are a normal part of the process of reorganization" and are desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly. *River City v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980).

12. Courts in this circuit have been instructed to consider the following factors in determining whether to approve a proposed settlement:

a. The probability of success in the litigation, with due consideration of the uncertainty of facts and law;

b. The complexity and likely duration of the litigation and any expense, inconvenience and delay and possible problems collecting a judgment;

c. The interest of the creditors and proper deference to their reasonable views; and

d. The extent to which settlement is truly the product of arms-length negotiations.

See In re Cajun Electric Power Coop, Inc., 119 F.3d 349, 355-56 (5th Cir. 1997).

13. The proposed settlement in this case meets the requirements for approval of a compromise and settlement for the following reasons:

a. The potential litigation against FRG Capital and the Ford Family will be complex and expensive.

b. Reducing the secured claims against the Debtor's assets represents a substantial benefit to the Debtor, and by extension, its creditors.

c. The compromise will lead to a distribution to creditors which will be greater than the amount that could have been paid from the Debtor's assets or the potential litigation due to the substantial payment to be made to the GUC Trust.

d. The compromise was the result of arms-length negotiations between the Debtor, the Committee and FRG Capital/The Ford Family.

e. The compromise provides the framework for a consensual plan which will provide for a significant recovery to unsecured creditors and for the Debtor's continued operations as a going concern.

WHEREFORE, PREMISES CONSIDERED, Fired Up, Inc. prays that the Court approve the compromise and settlement as set forth herein and for such other and further relief, at law and in equity, to which he may be entitled.

Respectfully Submitted,

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ATTORNEYS FOR FIRED UP, INC.

CERTIFICATE OF SERVICE

I certify that the foregoing was served by electronic mail on September 23rd, 2014, to all parties listed on the Eleventh Master Limited Service List attached hereto and made a part hereof and electronically by the Court's ECF system to all parties registered to receive such service.

/s/ Stephen W. Sather_____

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